

Item SP04-18 Response Form

Title: **Definition of “Subordinate Judicial Officer”** (amend Canon 6A of the California Code of Judicial Ethics and add definition of “subordinate judicial officer” to Terminology section of the code)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: **Ms. Romunda Price,**
Administrative Office of the Courts
455 Golden Gate Avenue, San Francisco, CA 94102

Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

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| DEADLINE FOR COMMENT: 5:00 P.M Friday, October 1, 2004 |
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

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| <i>Circulation for comment does not imply endorsement by the California Supreme Court.</i> |
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| Title | Definition of “Subordinate Judicial Officer” (amend Canon 6A of the California Code of Judicial Ethics and add definition of “subordinate judicial officer” to Terminology section of the code) |
| Summary | The proposed amendment to canon 6A revises the list of categories of judicial officer deemed “judges” within the meaning of the Code of Judicial Ethics to include the term “subordinate judicial officer.” The addition of a definition of “subordinate judicial officer” to the Terminology section of the code would clarify the meaning of that term for purposes of the code. |
| Source | Supreme Court Advisory Committee on the Code of Judicial Ethics |
| Staff | Mark Jacobson, 415-865-7898 |
| Discussion | <p>Government Code section 69917, effective January 1, 2003, states: “A subordinate judicial officer may not engage in the private practice of law except to the extent permitted by Judicial Council rules.” Rule 6.665 of the California Rules of Court, effective on the same date, provides: “A subordinate judicial officer may practice law only to the extent permitted by the Code of Judicial Ethics.”</p> <p>Canon 6A provides that all “judges” are subject to the code unless otherwise specified in the code. It lists the categories of judicial officer that are deemed “judges” within the meaning of the Code of Judicial Ethics. It states:</p> <p style="padding-left: 40px;">Anyone who is an officer of the state judicial system and who performs judicial functions, including, but not limited to, a magistrate, court commissioner, referee, court-appointed arbitrator, judge of the State Bar Court, temporary judge, or special master, is a judge within the meaning of this Code. All judges shall comply with this Code except as provided below.</p> <p>Although canon 6A includes such terms as “court commissioner” and “referee,” it does not include the term “subordinate judicial officer.” There currently is no reference to “subordinate judicial officers” in the code.</p> <p>The Supreme Court Advisory Committee on the Code of Judicial Ethics has recommended to the Supreme Court that it circulate for public comment a proposed amendment to canon 6A that includes the term “subordinate judicial officer.” The committee also recommended the circulation for comment of a proposed amendment to the Terminology section of the code, which precedes the canons, that would add a definition of “subordinate</p> |

judicial officer.” The committee concluded that it would be helpful to include and define the term in the code, especially given that Government Code section 69917 and rule 6.665 use the term and rule 6.665 refers to the Code of Judicial Ethics.

The amendment to canon 6A would replace the terms “court commissioner” and “referee” with “subordinate judicial officer” because those terms fall within the meaning of “subordinate judicial officer” as used in the Government Code and the California Rules of Court. The effect of this amendment would be that the code would apply to all subordinate judicial officers as well as to magistrates, State Bar Court judges, and special masters.

The proposed definition to be added to the Terminology section incorporates the constitutional provision authorizing courts to appoint subordinate judicial officers. Article VI, section 22 of the California Constitution permits trial courts to appoint individuals to perform “subordinate judicial duties.”

In addition to clarifying that commissioners and referees are subordinate judicial officers for purposes of the code, the proposed definition includes the term “hearing officer.” This would be consistent with rule 6.660 of the California Rules of Court, which defines subordinate judicial officer to include “a commissioner, a referee, and a hearing officer.” It would also clarify that juvenile hearing officers and mental health hearing officers are subject to the Code of Judicial Ethics.

To avoid any possible conflict with existing definitions of “subordinate judicial officer” in statutes or rules, the proposed definition in the Terminology section states that the definition is only for purposes of the Code of Judicial Ethics.

The text of the proposed amendment to Canon 6A and the proposed definition for the Terminology section are attached.

Attachments

The definition of “subordinate judicial officer” in the Terminology section of the California Code of Judicial Ethics would be adopted effective January 1, 2005, to read:

1 **Terminology**

2

3 “Subordinate judicial officer” is, for the purposes of this Code, a person
4 appointed pursuant to article VI, section 22 of the California Constitution,
5 including, but not limited to, a commissioner, referee, and hearing officer.
6 See Canon 6A.

Canon 6A of the California Code of Judicial Ethics would be amended effective January 1, 2005, to read:

1 **A. Judges**

2

3 Anyone who is an officer of the state judicial system and who performs
4 judicial functions, including, but not limited to, a subordinate judicial
5 officer, magistrate, ~~court commissioner, referee~~, court-appointed
6 arbitrator, judge of the State Bar Court, temporary judge, ~~or~~ and special
7 master, is a judge within the meaning of this Code. All judges shall
8 comply with this Code except as provided below.

9

10 *ADVISORY COMMITTEE COMMENTARY*

11 *For the purposes of this Canon, if a retired judge is serving in the*
12 *assigned judges program, the judge is considered to “perform judicial*
13 *functions.” Because retired judges who are privately retained may*
14 *perform judicial functions, their conduct while performing those functions*
15 *should be guided by this Code.*